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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 166.

HARVEY TERRY, PLAINTIFF IN ERROR,

vs.

EMILY H. TUBMAN.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF GEORGIA.

FILED APRIL 11, 1874.

Wm Hunt
Secretary

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1 UNITED STATES OF AMERICA,
Southern District of Georgia:

To the judges of the fifth circuit court of the United States for the southern district of Georgia:

The petition of Harvey Terry, who avers he is a citizen of and residing in the State of Virginia, in the said United States, sheweth, that Emily H. Tubman, a citizen of and residing in the State of Georgia, in said southern district, in the said United States, owes to and detains from your petitioner the sum of five thousand four hundred and one dollars, exclusive of interest.

For that by a certain statute of the State of Georgia, passed on the sixth day of December, A. D. 1810, and the acts of the general assembly of the State of Georgia amendatory thereto, which statute now remains in full force, a certain corporation was created, by the name and style of the President, Directors, and Company of the Bank of Augusta, with a capital stock of three hundred thousand dollars, with the
2 privilege of increasing the same to six hundred thousand dollars, divided into shares of one hundred dollars each, located at Augusta, in said southern district of Georgia, with power to the said corporation to issue bills or notes for circulation.

And by the said statute it was, among other things, enacted "that the individual property of the stockholders in said bank shall be bound for the ultimate redemption of the bills issued by said bank in proportion to the number of shares held by them respectively," as by the record of said act here in court at large appears.

And the said Emily H. Tubman, on the first day of June, A. D. 1862, was the owner of, in her own right, and now holds and owns, three hundred and seven shares of the capital stock of said bank, each share of the value of one hundred dollars, and was and is a member of said corporation, and a stockholder therein, and subject to the liabilities
3 imposed by the said statute, to wit, in the district aforesaid.

And heretofore, at Augusta, in the district aforesaid, and at the times hereinafter specified, the said President, Directors, and Company of the Bank of Augusta, for a good and valuable consideration then and there by it received, made, issued, and put in circulation its certain bills, commonly called bank-bills, of the dates, descriptions, and denominations hereinafter stated, each payable to bearer on demand, and signed by the then president of said bank and countersigned by the then cashier of said bank at the time the said bills were issued, to wit:

(48) forty-eight bank-bills for the sum of two dollars each, payable to
48 bills, $2 each. A. bearer on demand, bearing date the first day of May, in the year eighteen hundred and (61) sixty-one, marked letter A, and numbered as follows: 6530, 7636, 4936, 5055, 6578, 5527, 4674, 4913, 6386, 4506, 4520, 5132, 7610, 5962, 4920, 5663, 6156, 7675, 6184, 6113, 4576, 7349, 6691, 6957, 5796, 6425, 6613, 5849, 4468, 6012, 4713, 1205, 6451, 5503, 4317, 6048, 6973, 6922, 6763, 4309, 5487, 7674, 7221, 7150, 7637, 7470, 6011, 7638, and signed by John Bones, pres., and J. W. Davies, cashier;

4 Thirty-two bank-bills, for the sum of two dollars each, payable
32 bills, $2 each. A. to bearer on demand, bearing date the eighth day of Dec., in the year eighteen hundred and (54) fifty-four, marked letter A, and numbered as follows: 3608, 2710, 2078, 2711, 2136, 3545, 4535, 2394, 3142, 5585, 1764, 5314, 342, 1059, 292, 488, 2269, 3461, 2561, 1499, 5431, 2836, 1435, 1761, 5854, 1024, 2137, 1402, 1715, 1159, 1139, 2622, and signed by John Bones, president, and J. W. Davies, cashier;

Sixty-two bank-bills, for the sum of one dollar each, payable to bearer on demand, bearing date the first day of May, in the year eighteen hundred and sixty-one, marked letter A, and numbered as follows: 7409, 5826, 6285, 6218, 5080, 5867, 7422, 7238, 5768, 5754, 1276, 1492, 4780, 6318, 6563, 5847, 7017, 7166, 5499, 7030, 4441, 5689, 4439, 7473, 5777, 7158, 6734, 6618, 4051, 4429, 5299, 4936, 7059, 5254, 5275, 6468, 7084, 4282, 3756, 5989, 5632, 4450, 4682, 4351, 5146, 4769, 5627, 5494, 7653, 5518, 5689, 4434, 5532, 4559, 4836, 5400, 3936, 5455, 7245, 7303, 6453, and signed by John Bones, president, and J. W. Davies, cashier;

Forty-two bank-bills, for the sum of one dollar each, payable to
5 bearer on demand, bearing date the first day of May, in the year eighteen hundred and sixty-one, marked letter C, and numbered as follows: 5256, 5865, 6550, 5138, 4172, 7655, 7404, 7317, 4536, 4400, 7265, 7216, 7375, 4444, 4786, 4575, 7650, 6083, 4636, 6348, 3900, 4819, 6292, 6814, 6232, 5943, 4352, 4593, 7670, 5954, 4224, 5726, 6834, 5530, 4440, 3488, 7602, 7591, 4017, 7662, 6804, 6670, and signed by John Bones, president, and J. W. Davies, cashier;

Twenty-nine bank-bills, for the sum of one dollar each, payable to bearer on demand, bearing date the eighth day of Dec., in the year eighteen hundred and fifty-four, marked letter B, and numbered as follows: 1577, 3340, 1209, 1868, 2912, 5522, 3220, 2891, 2238, 4452, 5250, 3259, 2360, 3558, 2457, 4327, 3583, 4462, 2795, 6440, 2495, 1599, 1355, 3074, 4117, 3576, 4872, 2781, 2194, signed by John Bones, pres., and J. W. Davies, cashier;

Thirty-one bank-bills, for the sum of one dollar each, payable to bearer on demand, bearing date the eighth day of Dec., in the year eighteen hundred and fifty-four, marked letter A, and numbered as follows: 4772, 2500, 4560, 3316, 1354, 1246, 3302, 2231, 1692, 2316, 3201, 4960, 2640, 3589, 2908, 3269, 4979, 3402, 2093, 2624, 2357, 5257, 2965, 2724, 3356, 3210, 2677, 1353, 2820, 3542, 3439, and signed by John Bones, pres., and J. W. Davies, cashier;

6 Twenty-two bank-bills, for the sum of one dollar each, payable to bearer on demand, bearing date the eighth day of Dec., in the year eighteen hundred and fifty-four, marked letter C, and numbered as follows: 1452, 2241, 1745, 2723, 1313, 2885, 2850, 3076, 3442, 1554, 1654, 2677, 2210, 3567, 1257, 2283, 2087, 2251, 3044, 3554, 1357, 1484, and signed by John Bones, pres., and J. W. Davies, cashier;

Fifty-eight bank-bills, for the sum of one dollar each, payable to bearer on demand, bearing date the first day of May, in the year eighteen hundred and sixty-one, marked letter B, and numbered as follows: 3686, 2117, 7211, 4786, 4881, 6212, 5365, 7407, 7317, 4536, 4400, 7265, 7216, 7375, 6628, 3825, 7249, 5844, 6392, 6386, 6250, 7134, 4184, 4075, 4913, 5691, 6666, 5949, 5473, 5387, 4285, 4504, 4928, 4654, 6350, 5837, 5369, 5983, 4393, 7055, 7311, 3873, 4992, 7612, 7593, 4012, 6674, 5621, 6425, 3608, 4788, 3919, 6910, 3940, 3348, 7331, signed by John Bones, pres., and J. W. Davies, cashier;

Three bank-bills, for the sum of one dollar each, payable to bearer on demand, bearing date the ninth day of Dec., in the year eighteen hundred and fifty-three, marked letter C, and numbered as follows: 1251, other numbers not legible, signed by John Bones, president, and J. W. Davies, cashier;

7 Two bank-bills, for the sum of one dollar each, payable to bearer on demand, bearing date the ninth day of Dec., in the year eighteen hundred and sixty-three, marked letter B, and numbered as follows: 1294, 1528, and signed by John Bones, pres., and J. W. Davies, cashier;

Seven bank-bills, for the sum of one dollar each, payable to bearer on demand, bearing date the—illegible—day of , in the year eighteen hundred and , marked letter' A, B, & C, and numbered as follows: Not legible—signed as last aforesaid;

One bank-bill, for the sum of two dollars *each*, payable to bearer on demand, bearing date the seventeenth day of Dec., in the year eighteen hundred and thirty-eight, marked letter A, and numbered as follows: 250, signed by Thomas Cumming, president, and Augustus Moore, cashier;

8 One bank-bill, for the sum of three dollars *each*, payable to bearer on demand, bearing date the—illegible—day of , in the year eighteen hundred and , marked letter A, and numbered as follows: 882, signed by Thomas Cumming, pres., and Augustus Moore, cashier;

Twenty-two bank-bills, for the sum of five dollars each, payable to bearer on demand, bearing date the first day of May, in the year eighteen hundred and forty-nine, marked letter A, and numbered as follows: 10249, 8347, 11889, 10882, 9529, 8201, 6719, 1134, 7514, 1566, 1160, 11963, 6960, , , 6374, 8479, 6754, 4489, 8852, 11174, 7650, signed by Robert F. Poe, pres., and J. W. Davies, cashier;

Seventeen bank-bills, for the sum of five dollars each, payable to bearer on demand, bearing date the first day of July, in the year eighteen hundred and fifty-two, marked letter A, and numbered as follows: 841, 1888, 616, 1798, 398, 1434, 1732, 383, 1947, 1399, 1449, 1949, 1632, 386, 1321, 611, 1863, signed by Robert F. Poe, pres., and J. W. Davies, cashier;

9 Twelve bank-bills, for the sum of five dollars each, payable to bearer on demand, bearing date the first day of July, in the year eighteen hundred and fifty-two, marked letter D, and numbered as follows: 2016, 1717, 1940, 899, 397, 1375, 1755, 1779, 1500, 241, signed by Robert F. Poe, pres., and J. W. Davies, cashier;

Fourteen bank-bills, for the sum of five dollars each, payable to bearer on demand, bearing date the first day of July, in the year eighteen hundred and fifty-two, marked letter C, and numbered as follows: 1944, 1569, 321, 267, 693, 1091, 1545, 1269, 1795, , 1272, 1796, 2092, 914, 831, signed Robert F. Poe, president, and J. W. Davies, cashier;

Five bank-bills, for the sum of five-dollars each, payable to bearer on demand, bearing date the fourth day of Nov., in the year eighteen hundred and fifty-eight, marked letter D, and numbered as follows: 2270, 2662, 2429, 2913, 2174, signed by John Bones, pres., and J. W. Davies, cashier;

10 Eight bank-bills, for the sum of five dollars each, payable to bearer on demand, bearing date the fourth day of Nov., in the year eighteen hundred and fifty-eight, marked letter A, and numbered as follows: 2260, 2557, 2427, 2875, 2534, 2332, 2435, 2296, signed by John Bones, pres., and J. W. Davies, cashier;

Three bank-bills, for the sum of one dollar each, payable to bearer on demand, dated the 4th day of March, 1858, two marked letter C, one D, and numbered as follows: 2759, 2776, 2520, signed as last aforesaid;

Seventeen bank-bills, for the sum of five dollars each, payable to bearer on demand, bearing date the fourth day of Nov., in the year eighteen hundred and fifty-eight, marked letter C, and numbered as follows: 2769, 2163, 2248, 2136, 2931, 2447, 2740, 2650, 2681, 2142, 2892, 2456, 2444, 2173, 2206, 2810, signed by John Bones, pres., and J. W. Davis, cashier;

Nine bank-bills, for the sum of five dollars each, payable to bearer on demand, bearing date the fourth day of Aug., in the year eighteen hundred and forty-seven, marked letter C, and numbered as follows: 2009, 2115, , , 2772, 1424, 2393, 2531, , signed by Robert F. Poe, pres., and J. W. Davies, cashier;

11 Three bank-bills, for the sum of five dollars each, payable to bearer on demand, bearing date the first day of Sep., in the year eighteen hundred and thirty-three, marked letter A and C, and numbered as follows: Numbers illegible—signed by John Moore, president, and Robert F. Poe, cashier;

One bank-bill, for the sum of five dollars, payable to bearer on demand, bearing date the 23 day of October, in the year eighteen hundred and thirty-four, marked letter A, and numbered as follows: 2819, signed as last aforesaid;

Forty-three bank-bills, for the sum of ten dollars each, payable to bearer on demand, bearing date the first day of May, in the year eighteen hundred and forty-nine, marked letter A, and numbered as follows: 10957, 12046, 9987, 8390, 6592, 10689, 8204, , 10084, 9071, 7518, 9451, 12099, 10949, 8385, 17541, 8600, 9368, 9449, 7152, 1567, 11953, 8490, 11915, 7167, 8250, 7171, 7702, 6676, 11246, 8217, 11098, 9874, 11796, 9704, 11546, 7679, 9049, 6727, 10304, 7419, 10927, 6890, signed by Robert F. Poe, pres., and J. W. Davies, cashier;

12 Eighteen bank-bills, for the sum of ten dollars each, payable to bearer on demand, bearing date the first day of May, in the year eighteen hundred and fifty-nine, marked letter B, and numbered as follows: 11383, 9413, 8067, 11812, 9038, 12063, 6682, 11935, 8772, 7664, 8492, 6655, 9907, 7269, 7589, 10747, , , 6916, signed by Robert F. Poe, pres., and J. W. Davies, cashier;

Twenty-two bank-bills, for the sum of ten dollars each, payable to bearer on demand, bearing date the first day of Sep., in the year eighteen hundred and fifty-eight, marked letter A, and numbered as follows: 1084, 3198, 1675, 1889, 1298, 963, 1354, 2774, 1008, 864, 2810, 2806, 211, 316, 404, 234, 1155, 3018, 936, 403, 585, 362, signed by John Bones, pres., and J. W. Davies, cashier;

Fourteen bank-bills, for the sum of ten dollars each, payable to bearer on demand, bearing date the third day of Sept., in the year eighteen hundred and thirty-six, marked letter A, and numbered as follows: 661, , , 5196, 2907, 3203, , 4936, 4628, 1295, 483, 3940, 4345, 7293, signed John Moore, president; Robt. F. Poe, cashier;

13 4628, 1225, 483, 3940, 4345, 3293, signed John Moore, pres., and Robt. F. Poe, cashier;

Fifteen bank-bills, for the sum of ten dollars each, payable to bearer on demand, bearing date the third day of Sept., in the year eighteen hundred and thirty-six, marked letter B, and numbered as follows: , 2659, 483, 900, 1843, 2715, 380, , , , , 312, , 2395, 3604, 4946, signed by John Moore, pres., and Robt F. Poe, cashier;

Thirteen bank-bills, for the sum of ten dollars each, payable to bearer on demand, bearing date the third day of Sept., in the year eighteen hundred and thirty-six, marked letter A, and numbered as follows: 3493, 4345, 3940, 483, 1225, 4628, 3203, 2907, 3196, , , 661, signed by John Moore, pres., and Robt. F. Poe, cashier;

Seven bank-bills, for the sum of ten dollars each, payable to bearer on demand, bearing date the fourth day of Aug., in the year eighteen

14 hundred and forty-seven, marked letter A, and numbered as fol-

lows: 3801, 6043, , , 4269, 5887, signed by Robt. F. Poe, pres., and J. W. Davies, cashier;

Thirteen bank-bills, for the sum of ten dollars each, payable to bearer on demand, bearing date the fourth day of July, in the year eighteen hundred and fifty, marked letter A, and numbered as follows: 4986, 1617, 1330, 3839, 3161, 517, 787, 5160, 2587, 4652, 351, 5275, 5618, signed Robt. F. Poe, pres.; J. W. Davies, cashier;

3587, 4652, 301, 5275, 5618, signed by Robt. F. Poe, pres., and J. W. Davies, cashier;

One bank-bill, for the sum of ten dollars *each*, payable to bearer on demand, bearing date the fourth day of July, in the year eighteen hundred and forty-seven, marked letter B, and numbered as follows: 726, signed as last aforesaid.

Two bank-bills, for the sum of ten dollars each, payable to bearer on demand, bearing date the day of Oct., in the year eighteen
15 hundred and thirty-three, marked—letter illegible—and numbered as follows: 922, , signed by Thomas Cumming, pres., and Robt. F. Poe, cashier;

Also thirty-two bank-bills, for the sum of twenty dollars each, payable to bearer on demand, bearing date the fourth day of July, in the year eighteen and fifty, marked letter B, and numbered as follows: 726, 1952, 349, 5331, 1580, 5378, 1548, 4173, 2394, 2365, 5098, 4227, 1927, 5417, 2499, 3823, 5645, 5712, 1093, 563, 5989, 332, 1659, 2503, 889, 1887, 2097, 1554, 1392, 2638, 2500, 428, signed by Robert F. Poe, president, and J. W. Davies, cashier;

One bank-bill, for the sum of ten dollars *each*, payable to bearer on demand, bearing date the fourth day of July, in the year eighteen hundred and forty-nine, marked letter B, and numbered as follows: 402, signed as last aforesaid;

Also fifteen bank-bills, for the sum of twenty dollars each, payable to bearer on demand, bearing date the third day of September, in the year eighteen hundred and thirty-six, marked letter A, and numbered
16 as follows: 702, 430, 388, 4042, , , , 7370, 4884, 2229, 3027, 1812, 3887, 2334, 1537, signed by John Moore, president, and Robert F. Poe, cashier;

Also twenty-eight bank-bills, for the sum of twenty dollars each, payable to bearer on demand, bearing date on the first day of September, in the year eighteen hundred and fifty eight, marked letter B, and numbered as follows: 2665, 786, 3006, 2814, 557, 658, , 2145, 1062, 773, 446, 2886, 2090, 2988, 1884, 454, 824, 1862, 852, 3054, 2328, 422, 1251, 2102, 129, 891, 1594, 679, signed by John Bones, president, and John W. Davies, cashier;

Also twenty-one bank-bills, for the sum of twenty dollars each, payable to bearer on demand, bearing date the first day of May, in the year eighteen hundred and forty-nine, marked letter A, and numbered as follows: 1699, 9896, 9145, 9882, 7680, 10633, 471, 8336, 1401, 11227, 9504, 7858, 10815, 1370, 10851, 1862, 10366, 11185, 6349, 6979, 8332, signed by Robert F. Poe, president, and John W. Davies, cashier;

Also three bank-bills, for the sum of twenty dollars each, pay-
17 able to bearer on demand, bearing date the fourth day of August, in the year eighteen hundred and forty-seven, marked letter A, and numbered as follows: 5862, 6064, 5868, signed as last aforesaid;

Also one bank-bill, for the sum of twenty dollars, payable to bearer on demand, bearing date the day of , in the year eighteen hundred and , marked letter , and numbered as follows: 254, signed by John B nes, president, and John W. Davies, cashier;

Also eight bank-bills, for the sum of fifty dollars each, payable to bearer on demand, bearing date the fourth day of July, in the year eighteen hundred and fifty, marked letter A, and numbered as follows: 3476, 4026, 2395, 3534, 5839, 5697, 180, 276, signed by Robert F. Poe, president, and J. W. Davies, cashier;

Also two bank-bills, for the sum of fifty dollars each, payable to bearer on demand, bearing date the eighth day of April, in the year eighteen hundred and twenty-five, marked, one letter A, number 313, and
18 one letter B, numbered 337, signed Thomas Cummings, president, and Augustus Moore, cashier;

Also two bank-bills, for the sum of fifty dollars each, payable on demand, bearing date the thirtieth day of November, in the year eighteen hundred and fifty-one, marked letter A, No. 512, and one marked letter B, number 585, signed by Robert F. Poe, president, and J. W. Davies, cashier;

Also two bank-bills, for the sum of fifty dollars each, payable to bearer on demand, bearing date the fifth day of April, in the year eighteen hundred and thirty-nine, marked letter B, and numbered as follows: 669 and 201, and signed John Moore, president, and Robert F. Poe, cashier;

Also one bank-bill, for the sum of one hundred dollars, payable to bearer on demand, bearing date the fifth day of April, in the year eighteen hundred and twenty-five, marked letter B, and numbered as follows: 238;

19 Two bank-bills, for the sum of fifty dollars each, payable to bearer on demand, bearing date the 4th day of July, in the year eighteen hundred and fifty, marked letter A, and numbered as follows, 454, 5070, signed Robert F. Poe, prest.; J. W. Davies, cashier;

One bank-bill, for the sum of twenty-dollars, payable to bearer on demand, bearing date the first day of Sept., in the year eighteen hundred and fifty-eight, marked letter B, and numbered 2717; signed John Bones, prest.; J. W. Davies, cashier;

One bank-bill, for the sum of ten dollars, payable to the bearer on demand, bearing date first day of Sept., in the year eighteen hundred and fifty-eight, marked letter A, and numbered as follows: 656, signed John Bones, prest.; J. W. Davies, cashier;

Four bank-bills, for the sum of two dollars each, payable to bearer on demand, bearing date the day of , in the year eighteen hundred and , marked letter A, and numbered as follows, 1514,
20 1539, 2060, on';

Four bank-bills, for the sum of one dollar each, payable to the bearer on demand, bearing date 8 day of Dec., in the year eighteen hundred and fifty-four, three marked letter B, one C, and numbered as follows, 1207, 3101, 1869, 4048;

One bank-bill, for the sum of twenty dollars, payable to bearer on demand, bearing date the 3rd day of Sept., in the year eighteen hundred and fifty-six, marked letter A, and numbered as follows: 418, signed John Moore, prest.; Robt. F. Poe, cash';

Two bank-bills, for the sum of twenty dollars each, payable to bearer on demand, bearing date the first day of May, in the year eighteen hundred and fifty-nine, marked letter A, and numbered as follows: 9631, one too illegible, signed Robt. F. Poe, president; J. W. Davies, cashier;

Nine bank-bills, for the sum of one dollar each, payable to bearer on demand, bearing date the first day of May, in the year eighteen
21 hundred and sixty-one, marked letter C, and numbered as fol-

lows: 5665, 5080, 5361, 7375, 6535, 2629, 6568, 7380, 6315, signed John Bones, prest.; J. W. Davies, cashier;

Eleven bank-bills, for the sum of two dollars each, payable to bearer on demand, bearing date the first day of May, in the year eighteen hundred and sixty-one, marked letter A, and numbered as follows: 3915, 6487, 4017, 6826, 3153, 7523, 4159, 5669, 7179, 7464, 4204, signed as last aforesaid.

Some of said bills are so worn and defaced as to render the number and date illegible, but, your petitioner avers, were all issued by said bank, making, in the aggregate, the sum of five thousand four hundred and one dollars, and are all on file with the clerk of this court.

And after said bills were so issued and circulated, not being dishonored, and before payment thereof, your petitioner became the bearer, holder, and owner thereof in a fair course of trade, and for a valuable consideration then and there paid for the same, to wit, fifty cents on
22 the dollar, without any notice, knowledge, or information whatever that the same had been dishonored or used in aid of the late rebellion against the United States, or had been used and circulated for any illegal or criminal purpose whatever.

And your petitioner avers that the said president, directors, and company of the Bank of Augusta, afterwards, to wit, on the sixth day of January, A. D. 1866, assigned and conveyed, for the benefit of its creditors, all of its property, both real and personal, its choses in action, claims and demands of every kind whatever, for the payment of its debts, in redemption of its bills, and so far as it could do so by its own act, and for all the purposes of the payment of its debts in the enforcement of the collection thereof, by suit or otherwise, and for the purpose of its creation, has become and is a dissolved corporation; that it has no place of business, rendering a demand for payment of said bills and a suit against said corporation wholly futile and useless.

23 And your petitioner avers that the property and assets of said corporation, when duly administered, and the proceeds appropriated, have not paid its indebtedness; and the said the president, directors, and company of the Bank of Augusta, at the time of the said failure and assignment, had, and has at this time, a large amount of its said bills in circulation, to wit, the sum of four hundred thousand dollars.

By means whereof, and by force of the statute aforesaid, an action hath accrued to your petitioner to have and receive of the said Emily H. Tubman, in her private capacity and of her individual property, the said sum of five thousand four hundred and one dollars, with interest, for the redemption of the bills aforesaid.

Yet the said Emily H. Tubman, although so indebted, and often requested so to do, hath not paid your petitioner the sum of money aforesaid, nor any part thereof, but the same to pay hath hitherto refused, and still refuses, to the damage of your petitioner ten thou-
24 sand dollars.

Wherefore he brings suit, and prays process may issue requiring the said Emily H. Tubman to be and appear at the clerk's office of said court, in the city of Savannah, at rules to be had on the first Monday in April next, to answer in the premises.

A. W. STONE,
Atty. for Petitioner.

Process.

UNITED STATES OF AMERICA,
Southern District of Georgia:

In the fifth circuit court of the United States for the southern district of Georgia.

HARVEY TERRY
vs.
EMILY H. TUBMAN.

The President of the United States to the marshal of the districts of Georgia, greeting:

The defendant, Emily H. Tubman, is hereby required, personally or by attorney, to be and appear at the clerk's office of said court, in the city of Savannah, at rules to be had on the first Monday of
25 April next, then and there to answer the plaintiff in an action of debt, as in default thereof the said court shall proceed as to justice shall appertain.

Witness the honorable Salmon P. Chase, Chief-Justice of the Supreme Court of the United States, this sixth day of March, in the year of our Lord one thousand eight hundred and seventy-two.

[SEAL.]

A. W. STONE,
Plaintiff's Attorney.

JAS. MCPHERSON, *Clerk.*

Plea of defendant.

In the fifth circuit court of the United States for the southern district of Georgia.

HARVEY TERRY
vs.
EMILY H. TUBMAN. Debt.

And now cometh, by attorney, the said defendant, and defends the wrong and injury, when, &c., and says that she does not owe the said sum of money by said plaintiff in his said suit demanded, nor
26 any part thereof, in manner and form as said plaintiff in his said suit alleged; and of this she puts herself upon the country.

And for further plea in this behalf, by leave of the court first had and obtained, the said defendant saith that said plaintiff ought not to have or maintain his said action against this defendant, because this defendant says that all of said bank-bills in said plaintiff's declaration named were issued by said bank before the first day of June, eighteen hundred and sixty-five, and none of them on or after that date, and that before said day said bank had notoriously stopped payment and ceased to transact business, and so has continued to the present day; and *and* so defendant saith that the right on which said suit of said plaintiff is founded accrued prior to the said first day of June, eighteen hundred and sixty-five, and not on or since that date, and was not barred on the sixteenth day of March, eighteen hundred and sixty-nine, and said suit was not brought on or be-
27 fore the first day of January, eighteen hundred and seventy, but has been brought since said last-named day; and defendant

pleads the act of the legislature of the State of Georgia, approved March the sixteenth, eighteen hundred and sixty-nine, entitled "An act in relation to the statute of limitations, and for other purposes," in bar of said suit.

And this defendant is ready to verify, and prays judgment of the court whether said plaintiff ought to have or maintain his said action against this defendant.

And, for further plea in this behalf, by leave of the court first had and obtained, this defendant saith that said plaintiff ought not to have or maintain his said action against this defendant, because, this defendant saith, that all of said bank-bills in said plaintiff's declaration mentioned were issued by said bank before the first day of June, eighteen hundred and sixty-five, and none of them on or after that day, and the liability of this defendant for the redemption thereof existed on and before said day, and has not arisen since said day, and said suit
28 was not barred on the sixteenth day of March, eighteen hundred and sixty-nine, and was not brought on or before the first day of January, eighteen hundred and seventy. And so defendant pleads the act of the legislature of Georgia, approved March the sixteenth, eighteen hundred and sixty-nine, entitled "An act in relation to the statute of limitations, and for other purposes," in bar of plaintiff's said suit; which said defendant is ready to verify, and prays judgment of the court whether said plaintiff ought to have or maintain his said action against this defendant.

And, for further plea in this behalf, by leave of the court first had and obtained, said defendant saith that said plaintiff ought not to have or maintain his said action against this defendant, because, this defendant saith, that before the commencement of this suit, to wit, on the twenty-fourth day of December, eighteen hundred and sixty-nine, this defendant paid and redeemed bills of said bank at that time
29 issued and outstanding, and for which said bank was liable, to an amount larger than the whole liability of this defendant for the redemption of bills of said bank, to wit, to the amount of seventy-six thousand eight hundred and twenty dollars, which are now to the court shown, and no bills have since that time been issued by said bank; which said defendant is ready to verify, and prays judgment of the court whether said plaintiff ought to have or maintain his said action against this defen't.

W. H. HULL,
Deft.'s Atty.

Filed Apl. 1, 1872.

JAS. McPHERSON, *Clerk.*

Amendment to plea.

In the fifth circuit court of the United States for the southern district of Georgia.

HARVEY TERRY
vs.
EMILY H. TUBMAN. } Debt.

And now comes the defendant in the above-stated case, and,
30 by leave of the court, amends her second plea in said case filed, by inserting next after the words "and ceased to transact busi-

ness," found in said plea, the words following, to wit: "and had become notoriously insolvent and unable to meet its liabilities."

WM. H. HULL,
Deft.'s Atty.

Acknowledgement.

Copy and notice of the above plea acknowledged.

A. W. STONE,
Plff.'s Atty.

Filed Apl. 16, 1872.

JAS. McPHERSON, *Clerk.*

Similiter & demurrer to deft.'s pleas.

In the fifth circuit court of the United States for the southern district of Georgia.

HARVEY TERRY
vs.
EMILY H. TUBMAN. } Debt.

And the said plaintiff, as to the plea of the said defendant by her first above pleaded, and whereof she has put herself on the country, doth the like.

And, as to the second plea of the said defendant, he saith that
31 the matter therein contained, in manner and form as the same are therein pleaded, are not sufficient in law to bar or preclude him from having or maintaining his aforesaid action against said defendant, and that he is not bound to answer the same.

Whereupon he prays judgment for his debt and his damages by him sustained.

And as to the third plea of the said defendant, he saith that the matters therein contained, in manner and form as therein pleaded, are not sufficient in law to bar or preclude him from having or maintaining his said action against her, the said defendent, and that he is not bound to answer the same.

Wherefore he prays judgment, &c.

And as to the fourth plea of the said defendant, he saith that the matter' therein contained, in manner and form as pleaded, are not sufficient in law to bar or preclude him from having or maintaining his said action against the said defendant, and that he is not bound
32 to answer the same.

Wherefore he prays judgment for his debt and his damages by him sustained, to be adjudged to him, &c.

A. W. STONE, *Plff.'s Atty.*

And now cometh, by attorney, the said defendant, and saith that her said second, third, and fourth pleas above demurred to are each sufficient in law to preclude the said plaintiff from maintaining his said suit, whereof she likewise prays judgment of the court.

WM. H. HULL,
Deft.'s Atty.

Filed April 25, 1872.

JAS. McPHERSON, *Clerk.*

Pleas of statute of limitation sustained.

And afterwards, to wit, on the twelfth day of December, one thousand eight hundred and seventy-three, before the judges of said court, came the within-named plaintiff, by his attorney within named, and the said defendant her attorney, and argument had upon the plea of statute of limitations and demurrer to the same, and it is adjudged that the pleas be sustained and judgment be rendered for the defendant.

Therefore it is considered that the said defendant do recover against the said plaintiff forty-nine dollars and forty-two cents for her costs and charges aforesaid, to the said plaintiff, by the said court, now hereof increase adjudged, and with its assent, and the said in mercy, &c.

W. H. HULL,
Plaintiff's Attorney.

Judgment signed and filed this 12 day of December, 1873.

JAS. McPHERSON, *Clerk.*

33 *Assignment of error.*

In the United States circuit court for the southern district of Georgia.

UNITED STATES OF AMERICA,
Southern Dist. of Georgia:

HARVEY TERRY
vs.
EMILY H. TUBMAN. } Debt.

And now comes the said plaintiff in error, and says that the said circuit court of the United States for the southern district of Georgia erred in its judgment, in that the said court sustained the plea of the said defendant that the act of the legislature of the State of Georgia, approved March sixteenth, eighteen hundred and sixty-nine, entitled "An act in relation to the statute of limitations, and for other purposes," in barr of said suit, and thereupon dismissed the plaintiff's petition, whereas the said court should have overruled said plea.

Therefore the said plaintiff in error prays that the said judgment of said court be reversed with costs.

HARVEY TERRY,
Complainant Per Se.

Filed March 3d, 1874.

JAS. McPHERSON, *Clerk.*

34 *Writ of Error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the southern district of Georgia, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you or some of you, between Harvey Terry as plaintiff and Emily H. Tubman as defendant, a manifest error hath happened to the great damage of the said Har-

vey Terry, as by his complaint appears, we being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there
35 held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Nathan Clifford, senior associate justice of the said Supreme Court, the thirteenth day of October, in the year of our Lord one thousand eight hundred and seventy-three.

[SEAL.] JAS. McPHERSON, *Clerk.*

Allowed by—

JOHN ERSKINE,
U. S. Dist. Judge for Georgia,
& one of the Judges of said Circuit Court.

FEBRUARY 28, 1874.

Filed March 3d, 1874.

JAS. McPHERSON, *Clerk.*

36 *Citation and service.*

UNITED STATES OF AMERICA, *ss:*

To Emily H. Tubman and her certain attorney, Wm. H. Hull, esq., of Augusta, Georgia, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the , wherein Harvey Terry is plaintiff and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness my hand and seal at the city of Atlanta, in the northern district of Georgia, this 28th day of February, 1874.

JOHN ERSKINE, [L. S.]
U. S. Judge for the Districts of Georgia,
& one of the Judges of said Circuit Court.

Service.

Service acknowledged, and further service waived, March 2d, 1874.

WM. H. HULL,
Deft.'s Atty.

Citation and service thereon filed March 3d, 1874.

JAS. McPHERSON, *Clerk.*

37 *Bond for costs.*

Know all men by these presents that we, Harvey Terry, of Colum-

bia, South Carolina, and George P. Curry, of Augusta, Georgia, are held and firmly bound unto Emily H. Tubman in the full and just sum of two hundred dollars, to be paid to the said Emily H. Tubman, or her certain attorney, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated this twenty-third day of February, in the year of our Lord one thousand eight hundred and seventy-four.

Whereas lately, at a United States circuit court held at Savannah, in the southern district of Georgia, in a suit depending in said court between Harvey Terry as plaintiff and Emily H. Tubman as defendant, a judgment was rendered against the said Harvey Terry, and the said Harvey Terry having sued out a writ of error to the Supreme Court of the United States to reverse said judgment, having obtained said
38 writ of error and filed a copy thereof in the clerk's office of the said court to reverse the said judgment in the aforesaid suit, and a citation directed to the said Emily H. Tubman and to her certain attorney, Wm. H. Hull, esq., of Augusta, Georgia, citing and admonishing to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such, that if the said Harvey Terry shall prosecute said writ of error to effect, and answer all damage and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

HARVEY TERRY. [L. S.]
G. P. CURRY. [L. S.]

Signed, sealed, and delivered in presence of—
J. H. SAWYER,
R. F. CURRY.
L. M. HUMMEL.

Approved by—

JOHN ERSKINE,
U. S. District Judge, for the Districts of Georgia, & one of the Judges of said Circuit Court.

FEBRUARY 28, 1874.

Filed March 3d, 1874.

JAS. McPHERSON, *Clerk.*

39 *Clerk's certificate.*

UNITED STATES OF AMERICA,
Southern District of Georgia:

I, James McPherson, clerk of the U. S. circuit court for said district, do hereby certify that the foregoing writings form a true copy of the record and of all proceedings in the case of Harvey Terry against Emily H. Tubman as remain of record and file in my office.

Witness my hand and the seal of the said court, at Savannah, in said district, this the sixth day of April, in the year of our Lord one thousand eight hundred and seventy-four.

[SEAL.] JAS. McPHERSON, *Clerk.*

(Indorsement on cover:) No. 166. Harvey Terry, plaintiff in error, vs. Emily H. Tubman. S. Georgia, C. C. U. S. Filed 11th April, 1874.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1875.

HARVEY TERRY, Plaintiff in Error,

vs.

EMILY H. TUBMAN, Defendant in Error.

In Error to the Circuit Court of the United States for the Southern District of Georgia.—Brief for Plaintiff.

HARVEY TERRY,
For Plaintiff in Error.

SUPREME COURT OF THE UNITED STATES.

———o———

Harvey Terry, Plaintiff in Error,
vs.
Emily H. Tubman, Defendant in Error.

———o———

OCTOBER TERM, 1875.---NO. 166.

———o———

BRIEF OF PLAINTIFF IN ERROR.

In Error to the Circuit Court of the United States for the Southern District of Georgia.

The Defendant in Error obtained a judgment against the Plaintiff in Error in a suit founded upon five thousand four hundred and one dollars of the bank notes of the Bank of Augusta, Ga., upon the plea of statute of limitations and demurrer to the same in bar of said suit, on the ground that the statute enacted by the Legislature of Georgia, approved March 16th, 1869, entitled "An Act in relation to the statutes of limitations and for other purposes, applied in bar of said suit to relieve the Defendant in Error from the statutory liability under the charter of said Bank as a stockholder, to pay and redeem said Bank bills.

The Plaintiff in Error filed his petitition on the 6th day of March, 1872, claiming payment upon five thousand four hundred and one dollars of the bank bills of the Bank of Augusta, Georgia, from said Defendant in Error, as a stockholder and owner of 307 shares, and setting out the charter of said Bank, and that said Bank was regularly organized and operated under said charter, with a capital of $300,000, divided into shares of one hundred dollars each share; that said Bank made and issued for value and put in circulation as money its Bank bills to a large amount, and had at the date of the filing of said Petition then outstanding and unpaid four hundred thousand dollars of said Bank bills; and that said Petitioner after said Bank bills were so issued and circulated, not being dis-

honored and before payment thereof, became the holder and owner for value of said Bank bills, sued on, as set out and described, and that said Bank's Charter now remains in force.

That said Bank on the 6th day of January, 1866, assigned all of its property and assets for the payment of its debts in the redemption of its bills, and that the property and assets of said corporation when duly administered have not paid its indebtedness as aforesaid while for the purposes of its incorporation it has ceased to exist, rendering a demand for payment of its bills and a suit against said Bank wholly useless.

That by said statute of incorporation it was enacted, "that the individual property of the stockholders in said Bank shall be bound for the ultimate redemption of the bills issued by said Bank in proportion to the number of shares held by them respectively, as by the record of said Act here in Court at large appears; by means whereof and by force of the statute aforesaid an action hath accrued to your petitioner to have and receive from the said Emily H. Tubman in her private capacity and of her individual property the said sum of five thousand four hundred and one dollars.

The Defendant in Error comes into Court upon the plea of statute of limitations and demurrer to the same and pleads in bar of said suit as follows:

"Because this defendant says that all of said Bank bills in said Plaintiff's declaration named were issued by said Bank before the 1st day of June, 1865, and none of them after that date; that before said day, said Bank had notoriously stopped payment and ceased to transact business as a bank and so has continued to the present day, and so defendant saith that the right on which the said suit of said Plaintiff is founded accrued prior to said 1st day of June, 1865 and not on or since that date, and was not barred on the 16th day March, 1869, and said suit was not brought on or before first day of January, 1870, but has been brought since said last named day, and defendant pleads the Act of the Legislature of the State of Georgia, approved March 16th, 1869, entitled 'An Act in relation to the statutes of limitations and for other purposes' in bar of said suit and this Defendant is ready to verify, &c."

And for a further plea, &c., because this Defendant saith, that all of said bank bills in said Plaintiffs declaration mentioned were issued by said Bank before the 1st day of June, 1865, and none of them after that day, and the liability of this Defendant for the redemption thereof existed on and before the said day, and has not arisen since said day, and said suit was not barred on the 16th day of March, 1869, and was not brought on or before the 1st day of January, 1870. And so Defendant pleads the Act of the Legislature of Georgia, Approved March 16th, 1869, entitled "An Act in relation to the statutes of limitations and for other purposes, "in bar

of Plaintiff's said suit, which said Defendant is ready to verify and prays judgment of the Court whether said Plaintiff ought to have or maintain his said action against this Defendant.

Pleas of the Statute of Limitations Sustained.—And afterwards, to wit: on the 12th day of December, 1873, before the Judges of said Court came the Plaintiff by Attorney and the Defendant by Attorney, and argument had upon the plea of the statute of limitations and demurrer to the same, and it is adjudged that the pleas be sustained and judgment be rendered for the Defendant.

A copy of the Act of the Legislature of Georgia referred to.

An Act passed by the Legislature of Georgia in March, 1869, entitled "An Act in relation to the Statute of Limitations and for Other Purposes."

Whereas, Such confusion has grown out of the distracted condition of affairs during the late war; and whereas, doubts are entertained relative to the law of limitations of accounts in this State, which should be put to rest:

SECTION 1. *Be it therefore enacted by the General Assembly of Georgia*, That all Acts of the Legislature of this State, and all ordinances of the conventions of 1865 and 1868, which have the force and effect of law, which are retroactive in their character relative to the Statute of Limitations, shall be held by the Courts of this State to be null and void in all cases in which the statute had fully run before the passage of said retroactive legislation.

SEC. 2 *And be it further enacted*, That all suits upon judgments obtained outside of this State prior to June 1st, 1865, not now barred, and all writs of *scire facias* to revive any judgment obtained in this State, which is now dormant, shall be brought by 1st January, 1870, or both the right of action and the remedy shall be forever barred.

SEC. 3. *And be it further enacted*, That all actions on bonds or other instruments under seal, and all suits for the enforcement of rights according to individuals, or corporations, under the statutes or acts of incorporation, or in any way by operation of law which accrued prior the 1st of June, 1865, not now barred, shall be brought by 1st of January, 1870, or the right of the party, plaintiff or claimant, and all right of action for its enforcement, shall be forever barred.

SEC. 4. *And be it further enacted*, That all actions on promissory notes, bills of exchange, or other simple contracts in writing, and all actions on open accounts, or for the breach of any contract not under the hand of the party sought to be charged, or upon any implied *assumpsit* or undertaking, which accrued on a contract which was made prior to June 1st, 1865, not now barred, shall be brought by 1st January next, after the passage of this Act, or the

right of the party, plaintiff, or claimant, and all right of action for its enforcement, shall be forever barred.

SEC. 5. *And be it further enacted*, That all actions against executors, administrators, guardians, or trustees, which occurred prior to 1st of June, 1865, or which are predicated upon any alleged neglect or misconduct of any such executor, administrator, guardian or trustee, in the investment of trust funds in currency, bonds or the like, without an order of Court or other sufficient authority, or in the management of any trust estate, which occurred prior to 1st of June, 1865; or when the management or investment was made prior to that date, shall be brought by 1st January, 1870, if not already barred, and not after, and the right of action shall be forever barred, if not brought within that time: *Provided*, That no executor, administrator, guardian or trustee shall have the benefit of this Act who has acted fraudulently and corruptly in the management of the trust estate.

SEC. 6. *And be it further enacted*, That all other actions upon contracts, expressed or implied, or upon any debt or liability whatsoever, due the public, or a corporation, or a private individual or individuals, which accrued prior to the 1st of June 1865, and are not now barred, shall be brought by 1st January, 1870, or both the right and the right of action to enforce it shall be forever barred. All limitations hereinbefore expressed shall apply as well to Courts of Equity as Courts of Law, and the limitation shall take effect in all cases mentioned in this Act, whether the right of action had actually accrued prior to the 1st of June, 1865, or was then only *inchoate* and imperfect, if the contract or liability was then in existence.

SEC. 7. *And be it further enacted*, That all actions for torts of any character, whatever, when tort or wrong was committed, or the right of action accrued, or the injury was done, whether to the person or the property of any person or corporation, prior to the 1st of June, 1865, by any person then or now a citizen or inhabitant of this State, which is not now barred, shall be brought and prosecuted within three months from the passage of this Act, or the right of action of the injured party, or plaintiff in the action, as well as the right of such party to sue, shall be forever extinguished barred, and foreclosed.

SEC. 8. *And be it further enacted*, That all cases of the character mentioned in any section of this Act which have arisen, or in which the right of action of the liability has accrued, or the contract has been made since the 1st of June, 1865, shall be controlled and governed by the limitation laws as set forth in the revised Code of Georgia, adopted by the new Constitution of this State.

SEC. 9. Repeals conflicting laws.

Approved March 16, 1869.

ASSIGNMENT OF ERRORS.

1ST. That the said Circuit Court of the United States for the Southern District of Georgia erred in its judgement, in that the said Court sustained the plea of the said Defendant, that the Act of the Legislature of the State of Georgia, *Approved* March 16, 1869, entitled "an Act in relation to the statutes of limitations and for other purposes" in bar of said suit, and thereupon dismissed the Plaintiff's petition, whereas the said Court should have overruled said plea and sustained said action.

2ND. That the Defendant's plea having admitted that Plaintiff's claim attached before the 1st day of June, 1865, it was error in the Court to hold that Plaintiff's suit was barred by said Act of March 16, 1869, and that said subsequent legislation of said State did impair and did bar the vested rights of a contract in said suit already attached under said charter.

STATEMENT OF FACTS.

I.

That said Bank of Augusta did not commit any Act of Bankruptcy or legal failure until the making of said assignment on the 6th day of January 1866, and the Bank bills sued on were all issued prior to the year 1865, paid out for value and circulated as money and intended to be used and circulated as money during the existence of said Bank's charter unless the same should be presented and payment demanded at an earlier date, and no demand of payment was made on said Bank bills prior to March 6th, 1872, the date of suit. See Complaint Record, pages 1 and 7.

II.

That the allegations set forth in the petition of said Plaintiff, that said Bank was organized and operated under said charter with a capital of $300,000, and issued its Bank bills to a large amount, and assigned its assets for the benefit of its creditors and left an indebtedness of $400,000 unpaid, after administering its assets, and that Defendant owned 307 shares of stock at the commencement of this suit stands admitted by the pleadings and the proportionate part of said unpaid liability as the owner of said shares is forty thousand nine hundred and thirty-three dollars and thirty-three cents, and the bills sued on by the Plaintiff are a part of the liabilities of said Defendant now unpaid. Record, pages 1 and 7.

III.

That Petitioner is not a citizen of the State of Georgia and never has been a citizen of said State, and his property in said Bank

notes sued on, accrued out of and beyond the territory of Georgia by virtue of the charter of said Bank previous to the 16th day of March, 1869 that he did not know of and was not bound to take cognizance of said subsequent legislation of the said Legislature of Georgia after his rights of property had vested under the charter of said Bank.

That said Act of said Legislature was retrospective and retroactive (except as to nine months and fifteen days of time) and was intended to affect and did affect the rights of property under contract and the rights of action then in existence, and did not affect, and was not intended to affect the rights of property under contracts to be made thereafter, and was not intended to affect the rights of action or bar the rights of any action or any contract made after the passage of said Act.

ARGUMENT OF FACTS.

1ST. That said Bank of Augusta did not commit any act of Bankruptcy or legal failure until the 6th day of January, 1866, the date of the assignment of said Bank and the Bank bills sued on were all issued prior to the year 1865, were paid out for value and circulated as money and intended to be used and circulated as money during the existence of said Bank's charter, unless the same should be presented and payment thereof demanded at an earlier date, and the fact of said Bank having ceased to exist for the purposes of its incorporation, did not annul its said charter, and no demand having been made for the payment of said Bank bills previous to the commencement of said suit on the 6th day of March, 1872, no breach of contract occurred before the demand made by that suit.

2ND. That the allegations set forth in the petition of Plaintiff, that said Bank was organized and operated under said charter with a capital of $300,000, and issued its Bank bills to a large amount and failed and assigned on the 6th day of January, 1866 all of its property and assets for the benefit of its creditors, and after administering its property and assets, left unpaid an indebtedness of four hundred thousand dollars, and that the defendant owned three hundred and seven shares of the stock of the said Bank at the date of the commencement of this suit, has not been denied and therefore admitted to be true; it is therefore submitted that the proportionate part of said ultimate liability or indebtedness of said Defendant to pay the debts of said Bank is forty thousand nine hundred and thirty-three dollars and thirty-three cents, and the Bank bills sued on are a part of the liabilities of said Defendant remaining now unpaid. Complaint Record, pages 1 and 7.

3RD. That the ultimate liability of said stockholders to pay and redeem the bills issued by said Bank, out of and from their individual property, did not constitute a fund for the benefit of the corporation, and was a fund which said corporation could not collect and apply to the payments of its debts; but Plaintiff submits that said *ultimate liability* did exist as a trust fund for the benefit of the holders of the said Bank bills and liable for the payment of the said Bank bills in this suit, and this Defendant is liable therefor.

4TH. That no part of said chartered contract set out "ceasing to do business or insolvency of said Bank," constituted a legal cause of action against said stockholders to redeem and pay the bills issued by said Bank, (but Plaintiff admits that said causes of action were good grounds to exhaust the assets of said bank in the payment of its debts and to terminate its legal existence) but that no ultimate liability had accrued and attached against said stockholder until a breach of contract had occurred, to wit: until a demand for payment of said Bank bills had been made and a refusal or inability of said Bank to make payment shown to exist; And submits that those facts having been shown, that said Bank had ceased to do business, was insolvent, had assigned all its property and assets for the benefit of its creditors, that said assets had been applied to the payment of its debts, constituted and was the necessary facts to show that the ultimate liability of said Defendant to redeem and pay said Bank bills had attached.

5TH. That Plaintiff is not a citizen of the State of Georgia and never has been a citizen of said State, and all his rights of property and rights of action in this suit accured out of and beyond the territory of Georgia, previous to the 16th day of March, 1869, and Plaintiff submits that he did not know of and was not bound to take cognizance of said Act of March 16th, 1869, while residing without the territory of said State, and that his right of action in said suit is not barred, and that his vested right of property in said Bank bills in said suit is not barred and could not be barred by said subsequent legislation of said State, after his said rights under the charter of said Bank had accrued and attached.

CONCLUSIONS OF LAWS.

1ST. That the charter of said Bank of Augusta and the subsequent Acts of the General Assembly of the State of Georgia amendatory thereto, is a contract made and accepted, by all the stockholders by the purchase and ownership of shares, and by the use of the franchises of said corporation, (operated by their officers and agents for the use, profit and advansage of said stockholders,) confirmed the acceptance thereof by said stockholders, that said stockholders are thereby bound by all of the terms, liabilities and obligations of said

contract, and upon acquiring the bank notes sued on, this Plaintiff acquired a vested right to have payment made on said Bank bills, in strict accordance with the terms of said charter and the terms of the said Bank bills, payment made on demand.

1 *Parsons on Contract*, 259.

Abbot's Digest Law of Corporations, 156, *V.* 113-129-131-132.

Manuscript Opinion, Sup. Court of Georgia, Dobbins vs. Sibley.

19 *Georgia Reports*, 325, *Dozier vs. Thornton.*

19 " " 361-2, *Robinson vs. Laue.*

1 *Mason*, 252-3-7, *Bullard vs, Bell.*

2ND. That if upon demand the corporation was unable to make payment, and the property and assets of said corporation having been exhausted in the payment of its debts, and the inability of said corporation to make further payment being thus established, then and at that date the ultimate liability of the said stockholders to redeem and pay the bank bills sued on in this suit attached.

19 *Georgia Reports*, 349, *Robinson vs. Lane.*

20 *Wallace*, 520, *Pollard vs. Bailey.*

3RD. That said ultimate liability of said stockholder to redeem and pay said Bank notes out of his or her private estate, consrituted a trust fund, set apart and appropriated by law under said charter, to secure the redemption of said Bank bills, issued by said Bank. That said ultimate liability of said stockholder is a security on which this Plaintiff had a right to rely for the final redemption and payment of said Bank bills sued on in this suit, and Plaintiff submits that the statutes of limitation of the State of Georgia under which his rights vested and accrued do not bar the rights of said Plaintiff under twenty years (see § 2916, Code Georgia,) and Plaintiff submits that the statutes of limitations do not apply to bar the rights of said Plaintiff from payment out of said trust fund or trust property. And Plaintiff further submits that his said right of property had vested in said Bank bills before the 16th day of March, 1869, and that the right of property having so vested, no subsequent legislation of the State of Georgia by Act of March 16th, 1869, could bar, and said Act did not bar the rights of Plaintiff from demanding redemption and payment of said Bank bills, and said Act did not bar the liability of said Defendant to redeem and pay said Bank bills.

19 *Georgia*, 337, *Robinson vs. Lane.*

17 *Wallace*, 610, *Hoag vs. Ins. Co.*

24 *Georgia*, 273, *Schley vs. Dixon.*

30 *Georgia*, 580, *Hargrove vs. Chambers.*

16 *Wallace*, 314, *Wallace vs. Whitehead.*

8 *Wallace*, 575, *Butz vs. City Muscatine.*

15 *Howard*, 304, *Curran vs. State of Ark.*

[illegible]*e*, 535, *Von Hoffman vs. City of Qaincy.*

[illegible]*e*, 10, *Hawthorne vs. Calef.*

[illegible], 43-51-2, *Terrett vs. Taylor.*

[illegible]*p. Ct.-Rep.* 2 230 *Wehrman vs. Reckert*

4TH. That the liability of said Defendant stockholder (had not [redacted] attached and did not attach, under said charter) to pay said Bank bills before the assignment of said Bank and the assets of said Bank had been administered and applied to payment of its debts, and did not attach until demand for payment was made on said Bank bills, and therefore said action did not accrue before the 1st day of June, 1865, but accrued since the assignment of said Bank, and the administration of the assets, establishing the ultimate liability of said stockholders, and since the breach of contract to pay on demand, to wit: on the day of commencement of this suit.

Code of Georgia, § 1491, *when Stockholders are Sueable.* 20 *Wallace*, 530, *Pollard vs. Bailey.* Record, page 1.

5TH. That the stockholders of said Bank of Augusta by the purchase and ownership of the shares of stock in said Bank assumed the responsibility of joint makers of the Bank bills sued on by the Plaintiff, and became the co-obligers as trustees, (pledged their private property) to pay said Bank bills whenever the ultimate liability to redeem and pay said Bank bills attached, to wit: upon presentation and demand for payment. Charter of Bank. Record, page 1.

6TH. That if it was sought by the Legislature of Georgia, by Act approved March 16th, 1869, to annul the vested rights of demand for the payment of money, and to annul the vested rights for the collection of money due this Plaintiff before said rights were barred by the laws of said State when this contract was entered into and made, then said Act should be declared unconstitutional and void.

And if is sought by said Act to annul and destroy the vested rights of this Plaintiff from demand and collection of the money due on the Bank bills in this suit before said rights would have been barred by the laws of Georgia existing when said contract was made, then said Act of March 16th, 1869, should be declared unconstitutional and void.

And if it was sought by said Act to annul the vested rights of this Plaintiff from demand and collection of the money due on said Bank bills before the right of demand had been made or before any time had run on the claim of said Plaintiff after his said claim had attached and became due, whereby said Plaintiff could proceed to enforce his said rights of action and collection from said Defendant, thus destroying vested rights, denying the rights of demand and the rights of collection without consideration or valne, then Plaintiff submits that said Act of the Legislature of Georgia is and ought to be declared unconstitutional and void, (see Sec. 6, Act March 16th, 1869,) as a bar to Plaintiff's suit.

47 *Georgia Reports*, 273, *Reed, et al vs. Flippins et al.*

13 *Wallace*, 647, *White vs. Hart.*

18 *Wallvce*, 546, *Boyce vs. Tabb.*

16 *Wallace*, 314, *Walker vs. Whitehead.*

10 *Georgia*, 190, *Winter vs. Jones.*

7TH. That said Act of March 16th, 1869. did not intend to affect the rights or remedies of any contract thereafter to be made, and was intended to effect those contracts and rights of property in existenceat that date only which were then outstanding and unpaid; that said Act was a class legislation, intended only for the purpose of legislating a certain kind or class of debts and obligations out of existence without payment, said Act barring both the rights of action and the remedy of collection from the holders of said claims and demands, from making collection and enforcing payment of said claims, whether the same were then due and demandable, or whether the said right of action, had actually accrued prior to the 1st day of June, 1865, or was then only incohate and imperfect, if the contract or liability was then in existence, (see Sec. 6 of said Act,) and therefore said Act should be declared unconstitutional and void, as a bar to Plaintiff's suit.

9 *Georgia*, 213, *McLeod vs. Burroughs.*

16 *Wallace*, 314, *Whitehead vs. Walker.*

Code Georgia, § 2639. The holder of negotiable paper not dishonored, or money or bank bills, will be protected in his title. Also § 2640, Code Georgia. A *bona fide* purchaser will be protected in his title.

8TH. That the fact that the Supreme Court of the State of Georgia has reviewed the said Act and passed their opinion thereon that said Act of the Legislature of the State of Georgia, approved March 16th, 1869, was a valid and constitutional act of legislation, for some purposes, and Plaintiff admits that for many purposes said Act may be legal, and submits that the Honorable Supreme Court of Georgia and the opinions of said Honorable Court are entitled to very great respect, and Plaintiff herein quotes cases adjudicated and the construction and effect given by said Honorable Court to said Act.

49 *Georgia*, 424, *Black vs. Swanson.*

This was an action upon a negotiable note, made in January, 1865, and became due in December, 1865; said note was plead as a set-off to a counter claim in a County Superior Court of Georgia. The Judge presiding charged the jury "that the note pleaded and introduced as a set-off was barred by the statute of limitations," by Act of March 16, 1869, to which charge the Defendant excepted. The jury returned a verdict for Plaintiff, and Defendant assigned error on said ground The Honorable Supreme Court of Georgia in this case say, "that no right of action accrued on said note until after the first day of June, 1865, although the note was made before that date; and by Act of March 16th, 1869, it is controlled by the limitations laws set forth in the Code, as by those laws his right of action would not be barred until December, 1871, as a set off-to an action brought against

him; he is entitled to recover thereon, so far as he is affected by the Statute of Limitations. Judgment reversed. See Sec. 8, Act March 16th, 1869.

The next adjudication had upon the validity in said Act is found in 49 Georgia Reports, 419, Kimbro *vs.* Bank of Fulton. This was an action brought on the 31st day of May, 1871, on the Bank bills of the Bank of Fulton, against the corporation for payment. Judgment was rendered in the Justice's Court in favor of the Plaintiff. The case was carried by the Defendant to the appeal docket of the Superior Court of the County. Defendant's fourth plea was the Statute of Limitations of March 16th, 1869, in bar, and plea was sustained by the Court of said County, and said ruling was assigned as error in exception to the demurrer on the 3d and 4th pleas. Judgment reversed.

The opinion of the Honorable Supreme Court of the State of Georgia in this ruling is particularly referred to upon the point of law that said Act of March 16th, 1869, did not bar Plaintiff's action upon the Bank bills of said Bank in the suit above quoted. That it did not appear from the record that said Bank bills sued on had lost their distinctive character, and if so, at what time; thus over ruling and annulling said Act of March, 16th 1869, as a bar to the claim of said creditor founded on Bank bills that were in circulation before the 1st day of June, 1865, which had not been demanded nor protested before that date and this Plaintiff submits that he has dilligently searched and failed to find any case adjudicated in the Georgia Reports parallel to his own suit herein, that has been adjudicated against or reversed the principles of law as set out in above decisions of said Court. That the case of Kimbro *vs.* Bank of Fulton should rule the case at bar, but Plaintiff submits that this Honorable Supreme Court of the United Staees is not bound by the rulings of said Honorable Supreme Court of Georgia, but that this Honorable Supreme Court will proceed to hear, examine, pass upon and determine the principles of law involved in this present suit at bar, as you, the Honorable Supreme Court of the United States, understand it, and rule thereon accordingly. 18 Wallace, 314, Boyce *vs.* Tabb and the authorities therein referred to.

9th. Finally Plaintiff in Error submits his cause for the judicial determination of this Honorable Supreme Court upon his writ of Error, wholly upon the principles of constitutional law, without burdening the labors of said Court with the examination of the vast amount of authorities that Plaintiff confidentially claims he might well have introduced in support of his said writ of error, but Plaintiff has confined his authorities cited to few cases, and trusts that his said brief and arguments have been set forth in a terse and and intelligible manner; but if any fact in this case has been omitted to be stated, or if any point of law has been omitted to

have been argued or referred to and explained, (or if any point of fact or law exists beneficial to the Plaintiff and conclusive of his rights not herein set forth and explained,) Plaintiff hereby refers the same and his whole cause to the wisdom and equitable legal determination of this Honorable Supreme Court of the United States as they shall find and construe it, and that this Appellant may be allowed a reasonable allowance for his labor and expenses in prosecuting this ~~appeal~~ writ of error.

POINTS PARTICULARLY SUBMITTED.

1ST. If the Court find that the stockholders in said Bank of Augusta are principal debtors when the bills were issued, and become liable to redeem and pay said Bank bills at any time after the stoppage or failure of said Bank, (without regard to the distribution of the assets of said Bank,) then Plaintiff submits that his rights of property in said Bank bills had vested and attached as a specialty under statute, (see Code Georgia, § 2916,) and which rights no subsequent legislation of said State could impair to bar Plaintiff's claim in said suit, and therefore the Act of March 16th, 1869, is void as to bar said suit.

2ND. If the Court are of the opinion that the ultimate liability of said stockholders of the Bank of Augusta, did not accrue to pay and redeem said Bank bills until the assets of said Bank had been exhausted in the payments of its debts, then Plaintiff submits that said ultimate liability is a trust fund (a pledge of property not vested in the corporation) set apart by law, to secure the redemption and payment of said Bank bills, and that said Act of March 16, 1869, is void as to bar said suit.

3RD. If the Court are of the opinion that the property of the Plaintiff in said Bank bills vested at the date they were acquired, but that the ultimate liability of said Defendant stockholder did not attach until the assets of said Bank had been exhausted, or until a failure to pay on demand was established, then Plaintiff submits that no time had elapsed after the liability of said Defendant attached wherein Plaintiff could proceed to enforce his rights of demand and collection before the enactment of said Act of March 16, 1869, and therefore said Act ought to be declared unconstitutional and void as a bar to Plaintiff's suit. See Sec. 8, Act March 16th, 1869.

All of which is respectfully submitted.

HARVEY TERRY, Plaintiff *per se.*

In the Supreme Court of the United States.

No. 166—October Term, 1875.

Writ of Error from the Circuit Court for Southern District, Georgia.

HARVEY TERRY

vs.

EMILY H. TUBMAN.

BRIEF FOR DEFENDANT IN ERROR.

WM. H. HULL, Defendant's Attorney.

In the Supreme Court of the United States.

No. 166—October Term, 1875.

This was an action brought in 1872 by the holder of certain bills of the "Bank of Augusta," a corporation formerly existing in the State of Georgia, against the defendant as a stockholder in said bank. The bills sued on were bank notes issued for circulation, and the suit was predicated upon the following section in the charter of said bank.

Act of Dec. 27, 1845:

"Sec. 3. That the individual property of the stockholders in said bank shall be bound for the ultimate redemption of the bills issued by said bank in proportion to the number of shares held by them respectively; and in case of a failure of said bank, all transfers of stock made within six months prior to a failure or refusal on the part of said bank to redeem its liabilities in specie when required, shall be void, and the private property of the individual or individuals transferring said stock shall be liable for the redemption of the bills of said bank as above stated."

In this case no previous suit against the bank had been instituted.

The defendant relied on two pleas:

One, of the limitation act of Georgia, of March 16, 1869, which plea alleged that all the bills sued on were issued prior to June 1, 1865, and that before that date said bank had become notoriously insolvent, and had wholly stopped payment and ceased to do business, and that all these conditions continued down to the present time. On demurrer to this plea, and joinder in demurrer, the Court sustained the plea and rendered judgment for the defendant.

There was another plea, of redemption of defendant's proportion of the bills of the bank before the bringing of this suit, which the present bill of exceptions does not notice. Exception is taken alone to the decision of the Court on the statute of limitations.

The following extracts from said statute contain the portions thereof applicable to the present case. The whole Act is found in the Acts of Georgia for 1869, p. 133.

Extract from Act of March 16th, 1869. Acts, p. 133:

Sec. 3. And be it further enacted, That all actions on bonds or other instruments under seal, and all suits for the enforcement of rights accruing to individuals or corporations under the statutes or acts of incorporation, or in any way by operation of law, which accrued prior to 1st June, 1865, not now barred, shall be brought by 1st January, 1870, or the right of the party, plaintiff or claimant, and all right of action for its enforcement, shall be forever barred.

Sec. 6. That all other actions on contracts, express or implied, or upon any debt or liability whatsoever due the public, or a corporation, or a private individual or individuals, which accrued prior to the 1st June, 1865, and are not now barred, shall be brought by 1st January, 1870, or both the right and the right of action to enforce it shall be forever barred. All limitations hereinbefore expressed shall apply as well to courts of equity as courts of law, and the limitations shall take effect in all cases mentioned in this Act, whether the right of action had actually accrued prior to the 1st June, 1865, or was then only inchoate, and imperfect, if the contract or liability was then in existence.

This Act is not in conflict with the Constitution of the United States.

McElmoyle vs. Cohen. 13 Peters, 327.
Ross vs. Duval. 13 Peters, 64.
Bacon vs. Howard. 20 Howard, 25.
Sohn vs. Watterson. 17 Wallace, 598.

In the last named case it is said, p. 599: "A statute of limitations may undoubtedly have effect upon actions which have already accrued as well as upon actions which accrue after its passage."

Ample time is given by this statute to bring suit; and the contracts to which it applies were, at the least, nearly four years past due when the Act was passed.

That it is not contrary to the constitution of Georgia is settled in George vs. Gardner, 49 Ga., 450.

The only remaining question is, whether it applies to the present case.

If the right of action against the stockholders accrued to the holders of the bills of this bank prior to the 1st day of June, 1865, then this action is barred, for it was not brought till after the 1st day of January, 1870.

The facts stated in the plea, which, on demurrer, are the facts of the case, are that the bills sued on were all issued prior to June 1st, 1865; that prior to that day the bank had ceased to transact business or to have a place of business, had stopped payment and was notoriously insolvent and unable to pay its obligations.

Under these facts the billholder had an immediate right of

action against the stockholder. We believe the true rule to be that, under this charter, the billholder could sue the stockholder upon the stoppage of payment by the bank; that this fact raises a presumption of insolvency, and that the ultimate ability of the bank to meet its obligations is matter of defence which the stockholders may show.

This view is certainly sustained by the phraseology of the charter, as to the transfer of stock, to be void, if made six months prior to a "failure or refusal of the bank to redeem," &c.

But, be this as it may, certainly, if the billholder proves that the fact of inability to pay exists, his action against the stockholder would be sustained.

A suit against the bank, execution and return of *nulla bona*, are only the evidences of insolvency—the fact may be proved in other ways; and it is the *insolvency* that completes the right of action against the stockholder.

The stockholder is liable for the "ultimate redemption" of the bills. What does this mean except their redemption after the failure and inability of the corporation?

The liability is in the second degree, but it is not stipulated in the charter that the bank must first be sued.

The liability is not different from that of a guarantor of the ultimate payment of a note. Such a guarantor may be sued on insolvency of the maker without suit or demand against the maker.

+ 2 Parson's on Bills and Notes, citing 1 Cushing, 473; 11 Conn., 213; 26 Conn., 437; 21 Vt., 265; 30 Vt., 127; Ib., 246; 8 Watts, 361.

Same point decided by this Court in the following terms:

"The ascertainment, upon correct and sufficient proofs, of entire or notorious insolvency is recognized by the law as answering the demand of due diligence, and as dispensing, under such circumstances, with the more dilatory evidence of a suit."

Camden vs. Doremus. 3 Howard, 533.

Insolvency of maker excuses notice to the guarantor or demand on the maker.

Reynolds vs. Douglas. 12 Peters, 497.

Rhett vs. Poe. 2 Howard, 479.

And if demand is excused *a fortiori* a suit is—

See the whole subject discussed in 2 American Leading Cases, 134–5–6.

So the omission of a creditor to take proceedings which would obviously have a fruitless result does not discharge the surety.

De Colyar on Guaranty, 487.

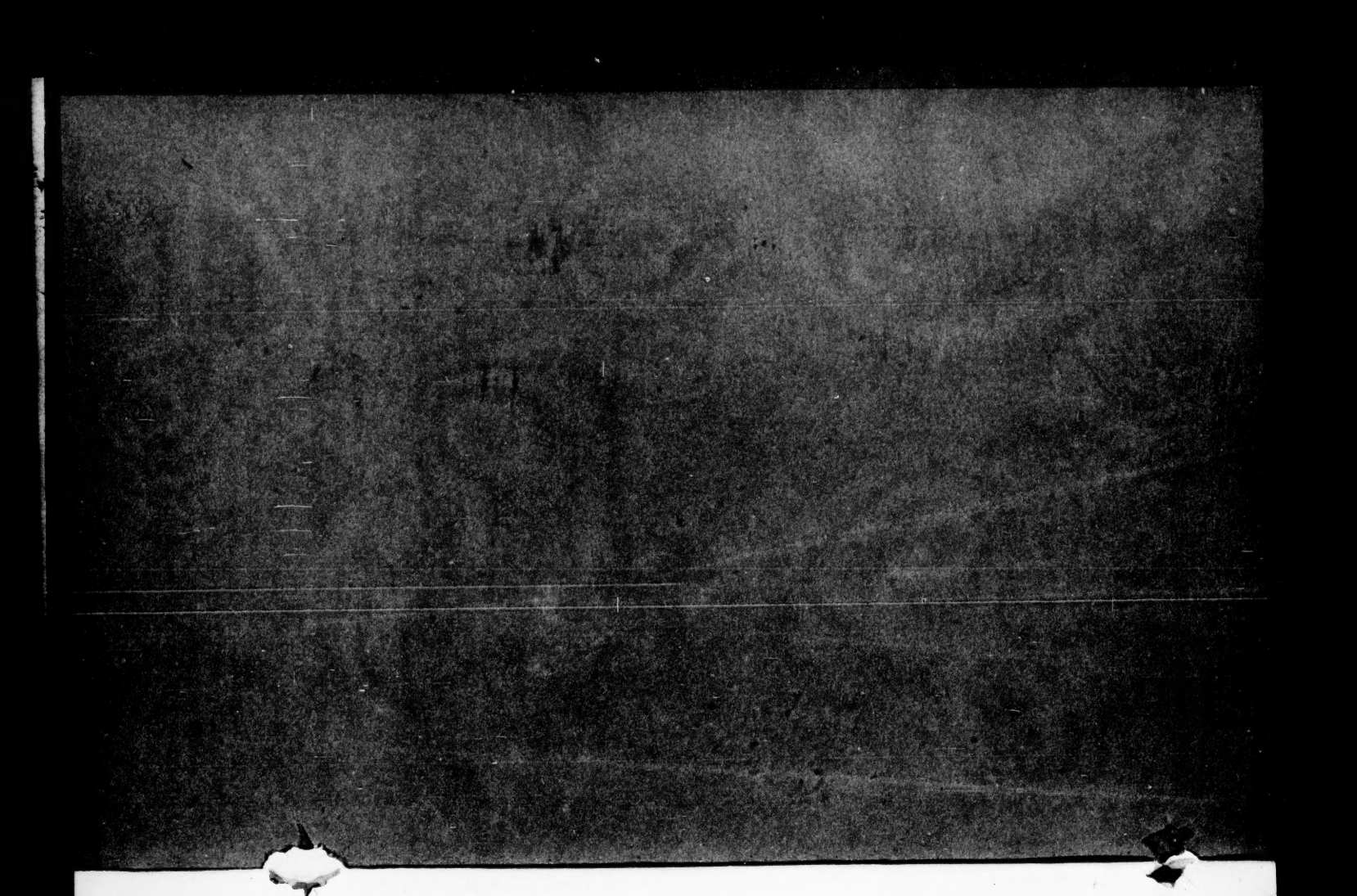
5 Bingham, New Cases, 728.

+ pages 142 – 143

The fact that these are bank bills does not vary the law. In Kimbro vs. Bank of Fulton, 49 Ga., 421, the Supreme Court of Georgia held that as soon as the bills of a bank cease to circulate as money, the reason for their exemption from the operation of the statute ceases and the statute begins to run.

Therefore these bills were *past due* before the 1st day of June, 1865.

In construing statutes of limitations the Courts of the United States will follow the Supreme Court of the State.

Leffingwell vs. Warner. 2 Black, 599.

Before the 1st June, 1865, then, these bills were due, the bank was insolvent and the holder was not required to incur the delay and expense of a fruitless suit against the bank. His right of action against the stockholder *had accrued;* and the Act of 1869 bars his right of action in this case.